

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROBERT MURRAY, *as Leviticus Lucifer*, :

Plaintiff, :

ORDER

-against- : 22 Civ. 638 (JPO) (GWG)

C.O. PRATT, et al., :

Defendants. :

-----X

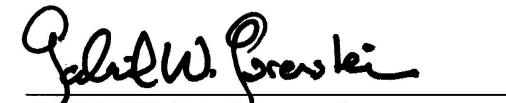
GABRIEL W. GORENSTEIN, United States Magistrate Judge

Plaintiff pro se Robert Murray filed this action under 42 U.S.C. § 1983, on January 24, 2022, alleging that defendants violated his civil rights while he was detained by the New York City Department of Corrections. See Docket # 2. The complaint named eight defendants, including John Doe defendants. See id. On March 18, 2022, the Court ordered the New York City Law Department to identify the John Doe defendants and ordered that “[w]ithin thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe Defendants.” (Docket # 6) (“Valentin Order”), at 4-5. On August 12, 2022, the Law Department filed a letter identifying all five John Doe defendants by name and shield number. (Docket # 25). On September 8, 2022, plaintiff filed an amended complaint that named the identified John Doe defendants but also added three new claims and named more than a dozen additional named and unnamed defendants. See Docket # 27. Because the inclusion of new claims and new defendants was not authorized under the Court’s Valentin Order, the Court on January 24, 2023, ordered the plaintiff’s amended complaint stricken. (Docket # 29 at 2). The Court directed plaintiff to file on or before February 23, 2023, a new amended complaint which complied with the Valentin Order. Id. The plaintiff has made no filings since the Court’s January 24, 2023 Order, however, and the deadline set by the Court has passed.

Plaintiff has failed to comply with a Court order and his conduct has significantly delayed this case. The Court will sua sponte give plaintiff one last chance to file a proper amended complaint as mandated in the January 24, 2023 Order (copy attached). The amended complaint shall be filed by March 22, 2023. Plaintiff is warned that if he fails to comply with this Order, his case may be dismissed without further notice for failure to prosecute under Rule 41 of the Federal Rules of Civil Procedure or for failure to obey pretrial orders under Rule 16(f).

SO ORDERED.

Dated: March 1, 2023
New York, New York


GABRIEL W. GORENSTEIN
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ROBERT MURRAY, *as Leviticus Lucifer*, :

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C.O. PRATT, et al., :

Defendants. :

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GABRIEL W. GORENSTEIN, United States Magistrate Judge

Plaintiff pro se Robert Murray brought this action under 42 U.S.C. § 1983, alleging that defendants violated his civil rights while he was detained by the New York City Department of Corrections (“DOC”). See Docket # 2 (“Compl.”). On March 15, 2022, plaintiff was granted leave to proceed in forma pauperis, that is, without prepayment of fees. (Docket # 4).

On January 24, 2022, plaintiff filed a complaint listing eight defendants, consisting of DOC, the Department of Corrections Mental Health Department, Corrections Officer Pratt, and five John Doe defendants. See Compl. On March 18, 2022, the court dismissed the claims against DOC and the Mental Health Department, and added the City of New York as defendant. (Docket # 6) (“Valentin Order”), at 3-5. The court directed service on the City of New York, and ordered the New York City Law Department to identify the John Doe defendants named in plaintiff’s complaint. Id. at 4-6. The Valentin Order instructed the Law Department to “ascertain the identity and badge number of each John Doe whom [p]laintiff seeks to sue . . . and the addresses where the [d]efendants may be served.” Id. at 4. The court ordered that “[w]ithin thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe Defendants.” Id. at 5.

The Law Department responded to the Valentin Order by filing a letter on August 12, 2022, identifying all five John Doe defendants by name and shield number. (Docket # 25). On September 8, 2022, plaintiff filed an amended complaint. See Docket # 27 (“Am. Compl.”). While the plaintiff named as defendants the five previously-unidentified defendants associated with his original claim, see id. at *8-9, plaintiff’s amended complaint adds three claims not included in the original complaint, labeled claims 1, 2, and 5. See id. at *5-7, 10. Because of the inclusion of these new claims, the amended complaint lists more than a dozen additional named and unnamed defendants. See id. at *4.

The inclusion of new claims and new defendants was not authorized. The court's Valentin Order directed plaintiff to "file an amended complaint naming the John Doe defendants." Valentin Order at 5. Thus, the plaintiff's amended complaint will be stricken.

Plaintiff is directed to file a new amended complaint on or before February 23, 2023, which complies with the Valentin Order. Specifically, plaintiff should file an amended complaint solely relating to his allegation that, on December 16, 2021, his rights were violated by the persons listed in his complaint and identified by the Law Department in its August 12, 2022 letter. (Docket # 25). The amended complaint should name as defendants the City of New York, C.O. Pratt, and the individuals listed in the August 12, 2022 letter, and must include only the claim related to the December 16, 2021 incident.

Plaintiff is warned that the amended complaint will replace, not supplement, the original complaint. An amended complaint form that plaintiff should complete is attached to this order. Once plaintiff has filed an amended complaint, the Court will again screen the amended complaint and, if necessary, issue an order asking defendants to waive service.¹

The Clerk of Court is directed to strike the plaintiff's amended complaint (Docket # 27) from the docket and remove all defendants except for the City of New York, C.O. Pratt, C.O. Louis Guglielmetti, C.O. Andy McMillan, C.O. Manuel Aldir, C.O. Kaseem Martin, and Captain Courtney Rogers.

The Clerk of Court is also directed to update the docket to reflect the plaintiff's mailing address (see Docket # 28) as follows:

Robert Murray
BC 950-22-0004
18-18 Hazen St.
East Elmhurst, NY 11370

The Clerk of Court is directed to mail a copy of this order to plaintiff at that address.

SO ORDERED.

Dated: January 24, 2023
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge

¹ To the extent that plaintiff wishes to raise new claims, he may file new action(s) in this court if he does not already have actions pending with respect to those claims. If plaintiff needs procedural assistance regarding the filing of new actions, he may contact the Pro Se Intake Unit at (212) 805-0175.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV

(Include case number if one has been assigned)

-against-

**AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See [Federal Rule of Civil Procedure 5.2](#).

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a *"Bivens"* action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name

Middle Initial

Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence:

Date(s) of occurrence:

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____